

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Crl.Rev.Pet.No. 3993 of 2007()

**CMP.7122/2006 of JUDL.MAGISTRATE OF FIRST CLASS-I,
KOTTARAKKARA**

REVN. PETITIONER: COMPLAINANT PETITIONER

**T.SHAJI, APPUVILASAM,
THRIKKANNAMANGAL,KOTTARAKARA.**

BY ADV. SRI.K.ABDUL JAWAD

RESPONDENTS: ACCUSED AND STATE

**1. S.JAYACHANDRAN, KARICHALIL
VADAKKATHIL VEEDU, PALLICKAL P.O.
KOTTARAKKARA.**

**2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

V. RAMKUMAR, J.
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CrI.R.P.No.3993 of 2007
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Dated this the 21st day of November, 2007

ORDER

In this revision filed under Section 397 read with 401 Cr.P.C, the revision petitioner, who is the complainant in CMP No.7122/06 on the file of the JFCM-1, Kottarakkara for an offence punishable under Section 138 of the Negotiable Instrument Act, 1881, challenges the order dated 18.06.06 passed by the learned Magistrate dismissing the complaint under Section 203 Cr.P.C.

2. The main reason for dismissing the complaint is that the petitioner did not produce evidence of acceptance of the statutory notice by the accused and the petitioner has thereby failed to prove one of the ingredients attracting the offence punishable under Section 138 of the Negotiable Instrument Act.

3. According to the revision petitioner, he had sent the statutory notice by registered post with acknowledgment due and since he had not received back the acknowledgment card after

getting the signature of the addressee - accused, he had averred in the complaint, that he had not received the acknowledgment card back and that he had applied for a certificate from the postal department. This was sufficient for maintaining the complaint. The question as to whether the statutory notice was duly served is a matter which need not be examined at the threshold, particularly when the complainant is entitled to rely on the presumption under Section 27 of the General Clauses Act that the notice correctly addressed and sent by registered post was duly delivered.

4. The learned counsel for the revision petitioner submitted that the complainant, subsequently received the certificate from the post office concerned to the effect that statutory notice was served on 4.5.06. He submitted that the complaint has been filed within 45 days thereafter and was therefore perfectly in order.

5. The view taken by the learned Magistrate cannot be sustained.

6. Since the impugned order was passed at a time when

the accused had not entered appearance before the court below, notice to the 1st accused is dispensed with in this revision.

7. In view of what has been stated above, the impugned order is set aside. C.M.P.No.7122/06 will stand restored back to file and shall be disposed of in accordance with law.

V. RAMKUMAR, JUDGE

sj

/True Copy/

P.A To Judge